

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 37651
Edward Russell Leath, Christopher Atwood Leath, Melissa May Leath,
and Marilyn Louis Leath-Dziuk
RN105602726
Docket No. 2013-1851-MSW-E

Page 1 of 2

Order Type:

Findings Agreed Order

Findings Order Justification:

Indifference to legal duty based on violation of a previous order.

Media:

MSW

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

2400 Block of East Loop 254, Ranger, Eastland County

Type of Operation:

unauthorized municipal solid waste disposal site

Other Significant Matters:

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Past-Due Fees: None

Other: None

Interested Third-Parties: None

Texas Register Publication Date: January 16, 2015

Comments Received: None

Penalty Information

Total Penalty Assessed: \$6,750

Total Paid to General Revenue: \$205

Total Due to General Revenue: \$6,545

Payment Plan: 35 payments of \$187 each

Compliance History Classifications:

Person/CN – Unsatisfactory (All four Respondents)

Site/RN – Unsatisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

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Page 2 of 2

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: June 21, 2013
Date(s) of NOV(s): N/A
Date(s) of NOE(s): August 19, 2013

Violation Information

Failed to prevent the unauthorized disposal of municipal solid waste ("MSW") (approximately 4,375 cubic yards of furniture, tires, paper, metal, and construction and demolition waste) [30 TEX. ADMIN. CODE §§ 330.15(a) and (c), and TCEQ Agreed Order Docket Nos. 2009-0728-MSW-E and 2009-1811-MSW-E Ordering Provisions Nos. 2.a. and 2.c.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondents removed all MSW from the Site as of September 11, 2014.

Technical Requirements:

None

Litigation Information

Date Petition(s) Filed: January 31, 2014; November 21, 2014
Date Answer Filed: March 4, 2014
SOAH Referral Date: April 11, 2014
Hearing Date(s):
Preliminary Hearing: June 12, 2014
Evidentiary Hearing: October 16, 2014 (rescheduled); December 5, 2014
Settlement Date: December 5, 2014

Contact Information

TCEQ Attorneys: Elizabeth Carroll Harkrider, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Isabel Segarra Treviño, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Keith Frank, Enforcement Division, (512) 239-1203
TCEQ Regional Contact: Michael Taylor, Abilene Regional Office, (325) 698-9674
Respondent Contacts: Edward Russell Leath, 2434 East Loop 254, Ranger, Texas 76470;
Christopher Atwood Leath, P.O. Box 221, Floresville, Texas 78114;
Melissa May Leath, 312 Meredith Drive, San Antonio, Texas 78228;
Marilyn Leath Dziuk, 1514 South Second Street, Floresville, Texas 78114
Respondents' Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

| | | | | | | |
|--------------|-----------------|-------------|------------------|------------|----------------|--|
| DATES | Assigned | 26-Aug-2013 | Screening | 5-Sep-2013 | EPA Due | |
| | PCW | 28-Oct-2014 | | | | |

RESPONDENT/FACILITY INFORMATION

| | | | |
|-----------------------------|--------------------------------------------------------------------------------------------------|---------------------------|-------|
| Respondent | Edward Russell Leath, Christopher Atwood Leath, Melissa May Leath, and Marilyn Louis Leath-Dziuk | | |
| Reg. Ent. Ref. No. | RN105602726 | | |
| Facility/Site Region | 3-Abilene | Major/Minor Source | Minor |

CASE INFORMATION

| | | | |
|----------------------------------------|-----------------------|------------------------------|--------------------|
| Enf./Case ID No. | 37651 | No. of Violations | 1 |
| Docket No. | 2013-1851-MSW-E | Order Type | Findings |
| Media Program(s) | Municipal Solid Waste | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Keith Frank |
| | | EC's Team | Enforcement Team 6 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$25,000 |

Penalty Calculation Section

| | | |
|-------------------------------------------------------------|-------------------|---------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$5,000 |
|-------------------------------------------------------------|-------------------|---------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

| | | | | |
|---------------------------|-------|-------------|--------------------------------|---------|
| Compliance History | 35.0% | Enhancement | Subtotals 2, 3, & 7 | \$1,750 |
|---------------------------|-------|-------------|--------------------------------|---------|

Notes: Enhancement for one order without a denial of liability and unsatisfactory performer classification.

| | | | | | |
|--------------------|----|------|-------------|-------------------|-----|
| Culpability | No | 0.0% | Enhancement | Subtotal 4 | \$0 |
|--------------------|----|------|-------------|-------------------|-----|

Notes: The Respondents do not meet the culpability criteria.

| | | |
|------------------------------------------------------|-------------------|-----|
| Good Faith Effort to Comply Total Adjustments | Subtotal 5 | \$0 |
|------------------------------------------------------|-------------------|-----|

| | | | | |
|-------------------------|------|--------------|-------------------|-----|
| Economic Benefit | 0.0% | Enhancement* | Subtotal 6 | \$0 |
|-------------------------|------|--------------|-------------------|-----|

Total EB Amounts: \$8,412
Approx. Cost of Compliance: \$56,284
*Capped at the Total EB \$ Amount

| | | |
|-----------------------------|-----------------------|---------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$6,750 |
|-----------------------------|-----------------------|---------|

OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

| | |
|-----------------------------|---------|
| Final Penalty Amount | \$6,750 |
|-----------------------------|---------|

STATUTORY LIMIT ADJUSTMENT

| | |
|-------------------------------|---------|
| Final Assessed Penalty | \$6,750 |
|-------------------------------|---------|

DEFERRAL

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction)

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY

\$6,750

Screening Date 5-Sep-2013 Docket No. 2013-1851-MSW-E

PCW

Respondent Edward Russell Leath, Christopher Atwood Leath, Melissa May Leath, and Marilyn Louis Leath-Dziuk

Policy Revision 3 (September 2011)

Case ID No. 37651

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105602726

Media [Statute] Municipal Solid Waste

Enf. Coordinator Keith Frank

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here adjust. | |
|-------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|-----|
| NOVs | Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>) | 0 | 0% |
| | Other written NOVs | 0 | 0% |
| Orders | Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 1 | 25% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (<i>number of counts</i>) | 0 | 0% |
| Emissions | Chronic excessive emissions events (<i>number of events</i>) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>) | 0 | 0% |
| Please Enter Yes or No | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 25%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unsatisfactory Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance
History
Notes

Enhancement for one order without a denial of liability and unsatisfactory performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 35%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 35%

| | | | | | |
|---------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|---------------------------------------|-----------------------------------|
| Screening Date | 5-Sep-2013 | Docket No. | 2013-1851-MSW-E | PCW | |
| Respondent | Edward Russell Leath, Christopher Atwood Leath, Melissa May Leath, and Marilyn Louis Leath-Dziuk | | | icy Revision 3 (September 2011) | |
| Case ID No. | 37651 | | | PCW Revision August 3, 2011 | |
| Reg. Ent. Reference No. | RN105602726 | | | | |
| Media [Statute] | Municipal Solid Waste | | | | |
| Enf. Coordinator | Keith Frank | | | | |
| Violation Number | <input type="text" value="1"/> | | | | |
| Rule Cite(s) | TCEQ Agreed Order Docket Nos. 2009-0728-MSW-E and 2009-1811-MSW-E, Ordering Provisions Nos. 2.a. and 2.c. and 30 Tex. Admin. Code § 330.15(a) and (c) | | | | |
| Violation Description | Failed to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 4,375 cubic yards of MSW, including furniture, tires, paper, metal, and construction and demolition waste, were disposed of at the Site. | | | | |
| Base Penalty | | | | <input type="text" value="\$25,000"/> | |
| >> Environmental, Property and Human Health Matrix | | | | | |
| OR | Release | Harm | | | |
| | | Major Moderate Minor | | | |
| | Actual | <input type="text"/> | <input type="text"/> | x | |
| | Potential | <input type="text"/> | <input type="text"/> | <input type="text"/> | Percent |
| | | | | | <input type="text" value="5.0%"/> |
| >> Programmatic Matrix | | | | | |
| | Falsification | Major | Moderate | Minor | |
| | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> | Percent |
| | | | | | <input type="text" value="0.0%"/> |
| Matrix Notes | Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation. | | | | |
| Adjustment | | | | <input type="text" value="\$23,750"/> | |
| | | | | <input type="text" value="\$1,250"/> | |
| Violation Events | | | | | |
| | Number of Violation Events | <input type="text" value="4"/> | <input type="text" value="720"/> | Number of violation days | |
| mark only one with an x | daily | <input type="text"/> | | | |
| | weekly | <input type="text"/> | | | |
| | monthly | <input type="text"/> | | | |
| | quarterly | <input type="text"/> | | | |
| | semiannual | x | | | |
| | annual | <input type="text"/> | | | |
| | single event | <input type="text"/> | | | |
| | | Four semiannual events are recommended from the September 16, 2011 order effective date to the September 5, 2013 screening date. | | | |
| Violation Base Penalty | | | | <input type="text" value="\$5,000"/> | |
| Good Faith Efforts to Comply | | | | | |
| | <input type="text" value="0.0%"/> | Reduction | | <input type="text" value="\$0"/> | |
| | Before NOV | NOV to EDPRP/Settlement Offer | | | |
| Extraordinary | <input type="text"/> | <input type="text"/> | | | |
| Ordinary | <input type="text"/> | <input type="text"/> | | | |
| N/A | x | (mark w th x) | | | |
| Notes | The Respondents do not meet the good faith criteria for this violation. | | | | |
| Violation Subtotal | | | | <input type="text" value="\$5,000"/> | |
| Economic Benefit (EB) for this violation Statutory Limit Test | | | | | |
| | Estimated EB Amount | <input type="text" value="\$8,412"/> | Violation Final Penalty Total | <input type="text" value="\$6,750"/> | |
| This violation Final Assessed Penalty (adjusted for limits) | | | | <input type="text" value="\$6,750"/> | |

Economic Benefit Worksheet

Respondent Edward Russell Leath, Christopher Atwood Leath, Melissa May Leath, and Marilyn Louis Leath-Dziuk
Case ID No. 37651
Reg. Ent. Reference No. RN105602726
Media Municipal Solid Waste
Violation No. 1

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| | | | | | | | |
|--------------------------|----------|-------------|-------------|------|---------|-----|---------|
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal | \$56,284 | 16-Sep-2011 | 11-Sep-2014 | 2.99 | \$8,412 | n/a | \$8,412 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to remove 4,375 cubic yards of MSW from the Site and dispose of it at an authorized facility. Date Required is the order effective date. Final Date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

| | | | | | | | |
|-------------------------------|--|--|--|------|-----|-----|-----|
| Disposal | | | | 0.00 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.00 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$56,284

TOTAL

\$8,412

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Compliance History Report

PENDING Compliance History Report for CN603577693, RN105602726, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN603577693, Edward Russell Leath **Classification:** UNSATISFACTORY **Rating:** 100.00

Regulated Entity: RN105602726, UNAUTHORIZED DUMPING **Classification:** UNSATISFACTORY **Rating:** 100.00
2400 BLK E LOOP 254 RANGER

Complexity Points: 0 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 2400 BLK E LOOP 254, RANGER TX, EASTLAND COUNTY

TCEQ Region: REGION 03 - ABILENE

ID Number(s):

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: September 18, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: September 18, 2008 to September 18, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Keith Frank

Phone: (512) 239-1203

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

1 Effective Date: 09/16/2011 **ADMINORDER 2009-0728-MSW-E (Findings Order-Agreed Order Without Denial)**

Classification: Major

Citation: 30 TAC Chapter 330, SubChapter A 330.15(a)

30 TAC Chapter 330, SubChapter A 330.15(c)

30 TAC Chapter 330, SubChapter A 330.7(a)

Description: Failure to prevent the unauthorized disposal of MSW.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

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Compliance History Report

PENDING Compliance History Report for CN603577701, RN105602726, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN603577701, Christopher Atwood Leath **Classification:** UNSATISFACTORY **Rating:** 100.00

Regulated Entity: RN105602726, UNAUTHORIZED DUMPING **Classification:** UNSATISFACTORY **Rating:** 100.00
2400 BLK E LOOP 254 RANGER

Complexity Points: 0 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 2400 BLK E LOOP 254, RANGER TX, EASTLAND COUNTY

TCEQ Region: REGION 03 - ABILENE

ID Number(s):

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: September 18, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: September 18, 2008 to September 18, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Keith Frank

Phone: (512) 239-1203

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

1 Effective Date: 09/16/2011 **ADMINORDER** 2009-0728-MSW-E (Findings Order-Agreed Order Without Denial)

Classification: Major

Citation: 30 TAC Chapter 330, SubChapter A 330.15(a)

30 TAC Chapter 330, SubChapter A 330.15(c)

30 TAC Chapter 330, SubChapter A 330.7(a)

Description: Failure to prevent the unauthorized disposal of MSW.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

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Compliance History Report

PENDING Compliance History Report for CN603577719, RN105602726, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN603577719, Melissa May Leath

Classification: UNSATISFACTORY **Rating:** 100.00

Regulated Entity: RN105602726, UNAUTHORIZED DUMPING
2400 BLK E LOOP 254 RANGER

Classification: UNSATISFACTORY **Rating:** 100.00

Complexity Points: 0

Repeat Violator: NO

CH Group: 14 - Other

Location: 2400 BLK E LOOP 254, RANGER TX, EASTLAND COUNTY

TCEQ Region: REGION 03 - ABILENE

ID Number(s):

Compliance History Period: September 01, 2008 to August 31, 2013

Rating Year: 2013

Rating Date: 09/01/2013

Date Compliance History Report Prepared: September 18, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: September 18, 2008 to September 18, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Keith Frank

Phone: (512) 239-1203

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

1 Effective Date: 09/16/2011 **ADMINORDER 2009-0728-MSW-E (Findings Order-Agreed Order Without Denial)**

Classification: Major

Citation: 30 TAC Chapter 330, SubChapter A 330.15(a)

30 TAC Chapter 330, SubChapter A 330.15(c)

30 TAC Chapter 330, SubChapter A 330.7(a)

Description: Failure to prevent the unauthorized disposal of MSW.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

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Compliance History Report

PENDING Compliance History Report for CN603577727, RN105602726, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN603577727, Marilyn Lois Leath-Dziuk **Classification:** UNSATISFACTORY **Rating:** 100.00

Regulated Entity: RN105602726, UNAUTHORIZED DUMPING **Classification:** UNSATISFACTORY **Rating:** 100.00
2400 BLK E LOOP 254 RANGER

Complexity Points: 0 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 2400 BLK E LOOP 254, RANGER TX, EASTLAND COUNTY

TCEQ Region: REGION 03 - ABILENE

ID Number(s):

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: September 18, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: September 18, 2008 to September 18, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Keith Frank

Phone: (512) 239-1203

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

1 Effective Date: 09/16/2011 **ADMINORDER 2009-0728-MSW-E (Findings Order-Agreed Order Without Denial)**

Classification: Major

Citation: 30 TAC Chapter 330, SubChapter A 330.15(a)

30 TAC Chapter 330, SubChapter A 330.15(c)

30 TAC Chapter 330, SubChapter A 330.7(a)

Description: Failure to prevent the unauthorized disposal of MSW.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



| | | |
|-----------------------------------|----------|------------------------------|
| IN THE MATTER OF AN | § | BEFORE THE |
| ENFORCEMENT ACTION | § | |
| CONCERNING | § | |
| EDWARD RUSSELL LEATH, | § | TEXAS COMMISSION ON |
| CHRISTOPHER ATWOOD LEATH, | § | |
| MELISSA MAY LEATH, AND | § | |
| MARILYN LOUIS LEATH-DZIUK; | § | ENVIRONMENTAL QUALITY |
| RN105602726 | § | |

AGREED ORDER

DOCKET NO. 2013-1851-MSW-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Edward Russell Leath, Christopher Atwood Leath, Melissa May Leath, and Marilyn Louis Leath-Dziuk (collectively "Respondents") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondents presented this Order to the Commission.

Respondents understand that they have certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, the right to an evidentiary hearing, notice of an evidentiary hearing, and a right to appeal. By entering into this Order, Respondents agree to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon Respondents.

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondents own an unauthorized municipal solid waste ("MSW") disposal site located at the 2400 Block of East Loop 254 in Ranger, Eastland County, Texas (the "Site"). The Site contains and/or involves the management of MSW as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on June 21, 2013, an investigator documented that Respondents failed to prevent the unauthorized disposal of MSW. Specifically, approximately 4,375 cubic yards of MSW, including furniture, tires, paper, metal, and construction and demolition waste, were disposed of at the Site.
3. The Executive Director recognizes that, by September 11, 2014, Respondents removed all MSW from the Site.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the TCEQ.

2. As evidenced by Finding of Fact No. 2, Respondents failed to prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE §§ 330.15(a) and (c), and TCEQ Agreed Order Docket Nos. 2009-0728-MSW-E and 2009-1811-MSW-E Ordering Provisions Nos. 2.a. and 2.c.
3. Pursuant to TEX. WATER CODE § 7.051, TCEQ has the authority to assess an administrative penalty against Respondents for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of six thousand seven hundred fifty dollars (\$6,750.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Respondents paid two hundred five dollars (\$205.00) of the administrative penalty. The remaining amount of six thousand five hundred forty-five dollars (\$6,545.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of one hundred eighty-seven dollars (\$187.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondents fail to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondents' failure to meet the payment schedule of this Order constitutes the failure by Respondents to timely and satisfactorily comply with all of the terms of this Order.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondents are assessed an administrative penalty as set forth in Conclusion of Law No. 4 for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' compliance with all the terms and conditions set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Edward Russell Leath, Christopher Atwood Leath, Melissa May Leath, and Marilyn Louis Leath-Dziuk, Docket No. 2013-1851-MSW-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
2. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
4. If Respondents fail to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondents' failure to comply is not a violation of

- this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
 6. This Order, issued by the Commission, shall not be admissible against Respondents in a civil proceeding, unless the proceeding is brought by the Office of the Attorney General of the State of Texas ("OAG") to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within TCEQ's jurisdiction, or of a rule adopted or an order or permit issued by TCEQ under such a statute. The Executive Director may, without further notice or hearing, refer this matter to the OAG for further enforcement proceedings if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
 7. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
 8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
 9. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
 10. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Order is the date of hand delivery of the fully executed Order to Respondents, or three days after the date on which the Commission mails a copy of the fully executed Order to Respondents, whichever is earlier. The Chief Clerk shall provide a copy of the fully executed Order to each of the parties.

SIGNATURE PAGE 1 of 4

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director



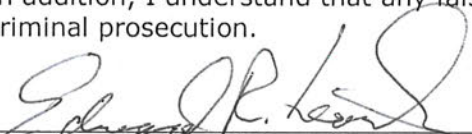
Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this Order and/or failure to timely pay the penalty amount may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature - Edward Russell Leath
2434 East Loop 254
Ranger, Texas 76470



Date

☐ If mailing address has changed, please check this box and provide the new address below:

SIGNATURE PAGE 2 of 4

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director



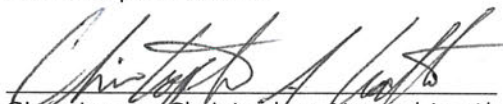
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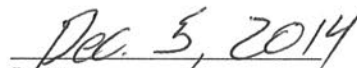
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- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature - Christopher Atwood Leath
P.O. Box 221
Floresville, Texas 78114



Date

☐ If mailing address has changed, please check this box and provide the new address below:

SIGNATURE PAGE 3 of 4

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director



Date

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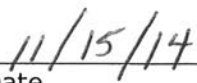
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In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature – Melissa May Leath
312 Meredith Drive
San Antonio, Texas 78228



Date

☐ If mailing address has changed, please check this box and provide the new address below:

MLD ECH
Marilyn Leath Dziuk

SIGNATURE PAGE 4 of 4

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

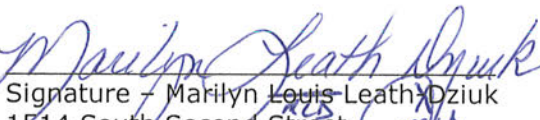

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- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.


Signature - Marilyn Louis Leath-Dziuk
1514 South Second Street
Floresville, Texas 78114
ECH


Date

☐ If mailing address has changed, please check this box and provide the new address below:
